

MINUTES OF THE MEETING
OF THE
BOARD OF MEDICINE AND SURGERY

March 14, 2014

ROLL CALL

The meeting of the Board of Medicine and Surgery was called to order by Chairman Michael J. Bittles, MD, at 9:05 am on March 14, 2014, in the Board Room, Country Inn and Suites, 5353 N. 27th Street, Lincoln, Nebraska. The following members answered the roll call:

Michael J. Bittles, MD, Chair
Jeffrey L. Howorth, Vice-Chair
Carl V. Smith, MD, Secretary
Mark D. Goodman, MD
Karen M. Higgins, MD
Vonn E. Roberts, MD
Judith A. Scott, DO

Absent: Merle J. Henkenius

A quorum was present and the meeting convened.

Also present to participate in the meeting: Julie Agena, Assistant Attorney General; Robert Semerena, Administrator, Investigations Unit; Dennis Scott, Investigator; Janeen Berg, Investigator; Jeff Newman, Investigator; Becky Wisell, Program Manager, Office of Medical and Specialized Health; and Vicki Bumgarner, Health Licensing Coordinator, Licensure Unit.

ADOPTION OF AGENDA

Howorth moved, seconded by Smith, to approve adoption of the agenda. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

APPROVAL OF MINUTES OF THE MEETING

A draft of minutes of the meeting for January 24, 2014, had been provided to the Board and the public, with a subsequent draft provided prior to the meeting with corrections made by staff. Roberts moved, seconded by Scott, to approve the minutes of the meeting for January 24, 2014, with the corrections made by staff as presented. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

INVESTIGATIONAL AND DISCIPLINARY REPORTS AND APPLICATION REVIEW

Roberts moved, seconded by Scott, to go into closed session for the purpose of hearing the investigational and disciplinary reports and all other closed session items as identified on the agenda. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried and the meeting went into closed session at 9:06 am.

Roberts and Howorth recused themselves from the meeting at 9:07 am.

Roberts and Howorth returned to the meeting at 9:16 am.

Higgins recused herself from the meeting at 9:24 am.

Higgins returned to the meeting at 9:27 am.

Suzanna Glover-Ettrich, Department Legal Counsel, entered the meeting at 10:20 am.

The meeting returned to open session at 10:28 am.

BOARD RECOMMENDATIONS ON APPLICATIONS FOR LICENSURE

Physician and Osteopathic Physician Applications for Initial Licensure

Britt, John – application for a license to practice medicine and surgery. Roberts moved, seconded by Smith, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Findley, John – application for a license to practice medicine and surgery. Scott moved, seconded by Howorth, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Greenspan, Stacey – application for a license to practice medicine and surgery. Higgins moved, seconded by Scott, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Larson, Todd – application for a license to practice medicine and surgery. Scott moved, seconded by Howorth, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

McDaniel-Turner, Annette – application for a license to practice medicine and surgery. Higgins moved, seconded by Goodman, to recommend issuance of a license, pending completion of the application. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

McGinley, Scott – application for a license to practice medicine and surgery. Roberts moved, seconded by Goodman, to table a recommendation on this application pending further information. Voting aye: Bittles, Howorth, Goodman, Higgins, Roberts, Scott. Voting nay: Smith. Absent: Henkenius. Motion carried.

Redd, Dierdre – application for a license to practice medicine and surgery. Smith moved, seconded by Goodman, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Antoniak, Derrick – application for a license to practice medicine and surgery. Scott moved, seconded by Howorth, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Heiser, Nicholas – application for a license to practice medicine and surgery. Smith moved, seconded by Roberts, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Maynes, Domingo – application for a license to practice medicine and surgery. Higgins moved, seconded by Smith, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Stockinger, Theresa – application for a license to practice medicine and surgery. Roberts moved, seconded by Smith, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Thomas, Richard – application for a license to practice medicine and surgery. Scott moved, seconded by Smith, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Wasilchen, Tarra – application for a license to practice medicine and surgery. Smith moved, seconded by Roberts, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Leonard, Samuel – application for a license to practice medicine and surgery. Roberts moved, seconded by Goodman, to recommend denial of the application for licensure based on applicant's failure to meet the criteria for active practice and failure to submit any evidence of continuing competency. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Mowry, Deborah – application for a license to practice medicine and surgery. Higgins moved, seconded by Smith, to table a recommendation on this application. The Board requested that the applicant submit an educational plan to be considered for possible recommendation of issuance of a reentry license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Lei, Junyi – application for a license to practice medicine and surgery. Smith moved, seconded by Higgins, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

Dizon, Victor – application for a license to practice medicine and surgery. Higgins moved, seconded by Smith, to recommend issuance of a license. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

PHYSICIAN AND OSTEOPATHIC PHYSICIAN REINSTATEMENT APPLICATIONS

There were no physician or osteopathic physician reinstatement applications to consider at this meeting.

PHYSICIAN AND OSTEOPATHIC PHYSICIAN APPLICATIONS FOR REINSTATEMENT OF LICENSE FOLLOWING DISCIPLINARY ACTION

Prescher, Michael – application for reinstatement of physician license following disciplinary action. Prescher had been issued a license with a limitation and on probation November 14, 2013. He was seeking reinstatement with a change to one of the conditions of his probation. Smith moved, seconded by Roberts, to reinstate the license with a change to probationary condition 4, whereby the requirement that the Practice Quality Monitor must be a Nebraska-licensed physician is changed to allow the Practice Quality Monitor to be a licensed physician who must be approved by the Board in advance of Prescher's practice for each location where he practices medicine. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

REQUEST TO WAIVE THE REQUIRED PHYSICAL PRESENCE OF THE SUPERVISING PHYSICIAN

The Board received a request from Good Neighbor Community Health Center to waive the requirement of the physical presence of the supervising physician for their physician assistant, Brian Obrist. The Physician Assistant Committee had recommended approval of this request pursuant to 172 NAC 90-006.07(3). Smith moved, seconded by Roberts, to support the recommendation of the Physician Assistant Committee and

approve the waiver. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

PRACTICE QUESTION: REGULATIONS GOVERNING MEDICINE AND SURGERY 172 NAC 88-010.02 UNPROFESSIONAL CONDUCT ITEM 20 – BOARD DISCUSSION ON INTERPRETATION OF THIS REGULATION

The Board had received an inquiry regarding 172 NAC 88-010.02 item 20 in the newly effective Regulations Governing Medicine and Surgery (effective date December 21, 2013), which states that the following is unprofessional conduct and grounds for discipline:

Providing treatment or consultation recommendations, including issuing a prescription, via electronic or other means, unless the physician has obtained a history and physical evaluation of the patient adequate to establish diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided and that arrangements exist to insure availability of the physician or physician coverage for follow-up patient care.

The question was whether an “in person” history and physical evaluation of the patient would be required in all circumstances of providing treatment or consultation. This request for clarification was later withdrawn.

The Board had also been contacted with a similar question by Marlin Bauhard, MD. Bauhard’s license was reinstated on probation and with a limitation October 11, 2013. The limitation prohibits Bauhard from prescribing, administering or dispensing controlled substances, tramadol or carisoprodol. Bauhard was seeking to practice with Thayer County Health Services, but the issue arose as to whether he would be able to provide coverage for the emergency room, since at times controlled substances may be needed for trauma or other situations. Correspondence from Scott Vonderfect, MD, a physician with Thayer County Health Services, was also received seeking a solution to this issue.

Michael Burcham, CEO, Thayer County Health Services, was present at this meeting and addressed the Board regarding their plans to employ Marlin Bauhard, MD. He stated that they want to ensure that Bauhard complies with the conditions of his discipline, but also would like to employ him and have him be able to provide coverage for the emergency room and be able to provide appropriate care for all situations. Burcham asked if it would be acceptable for Bauhard to contact a back-up physician and provide his assessment of the situation and then the back-up physician would order/prescribed the controlled substance for the patient for situations in which a controlled substance was necessary.

In response to both questions, Smith moved, seconded by Howorth, that a physician may authorize a prescription for a patient who he or she has not personally examined based upon consultation with the physician who is directly working with the patient. The physician who is directly working with the patient would be responsible for obtaining a history and physical evaluation of the patient adequate to establish diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided and that arrangements exist to insure availability of the physician or physician coverage for follow-up patient care. This practice would not be considered unprofessional conduct pursuant to 172 NAC 88-010.02 item 20.

DIRECTOR'S REPORT ON THE CREDENTIALING REVIEW PROPOSAL TO CHANGE STATUTES REGARDING ACUPUNCTURE SCOPE OF PRACTICE

At the previous meeting the Board had discussed the Nebraska Credentialing Review Proposal to change the statutes regarding the acupuncture scope of practice. The proposal is to remove the requirement that a patient needs a referral from a physician prior to an initial acupuncture treatment.

At this meeting the Board reviewed the Director's Report on the Proposal to Expand the Scope of Practice of Acupuncturists which indicated that the Director recommends that the current pre-screening agreement be eliminated.

Joe Wollen, licensed acupuncturist representing the Nebraska Acupuncture and Oriental Medicine Association, stated they are planning on presenting this scope of practice proposal as legislation in the 2015 legislative session. He said that in place of the referral from a physician, they are including a "reverse referral" in the legislation, which would require the acupuncturist to refer the patient to a physician if the acupuncturist saw a condition which he or she could not treat.

Higgins moved, seconded by Goodman, to go on record in support of the removal of the referral requirement for licensed acupuncturists as is currently in the statute. Voting aye: Bittles, Howorth, Smith, Goodman, Higgins, Roberts, Scott. Voting nay: none. Absent: Henkenius. Motion carried.

GUIDANCE AND DIRECTION FROM THE BOARD REGARDING OBSERVERSHIPS, SHADOWING, CLINICAL EXTERNSHIPS AND RESEARCHERS AT NEBRASKA MEDICAL SCHOOLS

Board members discussed a draft prepared by Roberts regarding guidance on observerships and similar circumstances. Discussion involved the different types of individuals who might participate in Observerships. Board members made some suggestions for changes and also asked staff to obtain policies on Observerships from the Nebraska medical schools. Roberts will make revisions to the draft accordingly, for discussion at the next meeting.

FEDERATION OF STATE MEDICAL BOARDS (FSMB) ISSUES

Call for Award Nominations

The Board had nominated Roger Brumback, MD, for the FSMB Distinguished Service Award. Recent notification had been received from the FSMB that he was not selected for this Award.

Upcoming Visit of FSMB Board Chair and CEO/President August 29, 2014 – Identification of Any Special Topics To Be Addressed

Wisell stated that representatives from the FSMB typically visit each State Board every few years. Jon V. Thomas, MD, Chair, FSMB Board of Directors, and Humayun J. Chaudhry, DO, FSMB President and CEO are planning to attend the August 29, 2014, Board meeting. They will have a presentation for the Board, but also can address any topics of specific interest that the Board requests. Board members stated that they may be able to identify more topics after the FSMB Annual Meeting in April, so asked that this topic be included on the agenda for the next meeting.

US DRUG ENFORCEMENT ADMINISTRATION RESPONSE TO BOARD'S CORRESPONDENCE REGARDING PRE-POPULATED PRESCRIPTIONS

The Board reviewed a response from the US Drug Enforcement Administration (DEA) to a letter from the Board dated October 30, 2012. The Board had sent the letter in response to a DEA letter regarding pharmacy "reminder letters" to medical providers and their use as pre-populated prescriptions. The Board's 2012 letter had indicated that they did not feel that pre-populated prescriptions would prejudice a practitioner in making a medical determination, and that the DEA's policy on this issue will increase the possibility of human error. The current letter from the DEA reiterated their position that a partially or fully pre-populated "prescription" for a controlled substance sent to a prescribing practitioner who has yet to make a medical determination for the patient is in violation of the Controlled Substances Act and DEA regulations.

REVIEW OF PHARMACEUTICAL CARE AGREEMENTS

Smith stated that one of the pharmaceutical care agreements for review is a collaborative practice agreement allowing for pharmacists to conduct influenza testing and Group A Streptococcus testing. The pharmacists must have completed an Accreditation Council for Pharmacy Education (ACPE) accredited certification course for performing rapid diagnostic tests and interpreting their results. Board members had a number of concerns with this agreement, including consideration that this practice would include diagnosing of the patient by a pharmacist.

Board members stated that they would like to discuss this agreement and issue further with the applicants and members of the Board of Pharmacy.

UPDATE ON NORTH CAROLINA DENTAL BOARD V. FEDERAL TRADE COMMISSION CASE IN SUPREME COURT

Glover-Ettrich updated the Board on the status of the recent antitrust case of North Carolina Dental Board v. Federal Trade Commission. It was recently announced that this case will be heard before the United States Supreme Court.

LEGISLATION

Dale Mahlman, Executive Vice President, Nebraska Medical Association, updated the Board on some legislation the Association is following. Wisell also updated the Board on legislation of interest to the Board.

Bittles stated he had been asked to have an item on the agenda concerning standardization of the order form used for advanced directives. Board members agreed to include this on the agenda for the next meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:55 am.

Respectfully submitted,

signature available upon request

Carl V. Smith, MD, Secretary
Board of Medicine and Surgery